

Federal Communications Commission

DA 97-1163

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 96-212
Table of Allotments,)	RM-8884
FM Broadcast Stations.)	
(Portland and Seaside, Oregon))	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 28, 1997

Released: June 6, 1997

By the Chief, Allocations Branch:

1. At the request of Radio Systems of Miami, Inc. ("petitioner"), the Commission has before it the Notice of Proposed Rule Making and Order to Show Cause, 11 FCC Rcd 13169 (1996), proposing the substitution of Channel 254C1 for Channel 253C at Portland, Oregon, and the modification of Station KUPL-FM's license to specify operation on the lower class channel. To accommodate the allotment at Portland, the Notice also proposed the substitution of Channel 235A or Channel 272A for Channel 255A at Seaside, Oregon, and the modification of Station KULU(FM)'s construction permit to specify operation on the alternate Class A channel. Comments in support of the proposal were filed by the petitioner and by Ken's Corporation ("Ken's"), permittee of Station KULU(FM).

2. As requested in the Notice, petitioner states that it will reimburse Ken's for the reasonable costs associated with Station KULU(FM)'s channel change, consistent with Commission precedent. Petitioner reiterates that the allotment of Channel 254C1 to Portland would enable Station KUPL-FM to improve the service which it provides to its community of license. From its present transmitter site, Station KUPL-FM's signal suffers from terrain-induced shading. In order to overcome this problem, Station KUPL-FM employs an FM translator to provide a consistent signal to the shaded areas within its 3.16 mV/m principal community contour. However, if Channel 254C1 is substituted for Channel 253C, Station KUPL-FM could relocate its transmitter to the KOIN-TV tower in downtown Portland and cure the shading problem without the need for a translator station. In addition, petitioner states that it plans to operate from the KOIN-TV tower with a master panel antenna that multiplexes the signal of three other stations owned by its parent corporation. In this connection, petitioner states that applications to modify the facilities of Stations KKJZ(FM), KUFO(FM), and KBBT-FM were filed on December 6, 1996. Thus, according to the petitioner, the grant of this proposed channel change would also significantly facilitate the development and implementation of the multiplexing arrangement.

3. In response to the Order to Show Cause, Ken's filed comments supporting the

substitution of channels at Seaside and stating its preference for Channel 272A. It notes that it is entitled to reimbursement for the costs associated with the station's channel change, citing Circleville, Ohio, 8 FCC 2d 159 (1967), and the petitioner's willingness to afford such reimbursement.

Technical Summary

4. Channel 254C1 can be allotted to Portland in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.1 kilometers (5.6 miles) west to accommodate petitioner's desired transmitter site. Channel 272A can be allotted to Seaside at the transmitter site set forth in Station KULU(FM)'s construction permit, which is 10.1 kilometers (6.3 miles) south.¹ Canadian concurrence in these allotments has been received since Portland and Seaside are located within 320 kilometers (200 miles) of the U.S.-Canadian border.

5. We believe the public interest would be served by substituting Channel 254C1 for Channel 253C at Portland and Channel 272A for Channel 255A at Seaside, since it could enable Station KUPL-FM to improve the service which it provides to its community of license. In conformance with Commission policy, petitioner will be required to reimburse Ken's for the reasonable costs associated with Station KULU(FM)'s channel change. As proposed, we will also modify Station KUPL-FM's license to specify operation on Channel 254C1 and Station KULU(FM) construction permit to specify operation on Channel 272A.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective July 21, 1997, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Portland, Oregon	222C, 229C, 238C, 246C, 254C1, 258C1, 262C, 266C, 270C
Seaside, Oregon	251A, 272A

6. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Radio Systems of Miami, Inc., for Station KUPL-FM, Portland, Oregon, IS MODIFIED to specify operation on Channel 254C1, in lieu of Channel 253C, subject to the following conditions:

¹ The coordinates for Channel 254C1 at Portland are 45-30-58 North Latitude and 122-43-59 West Longitude. The coordinates for Channel 272A at Seaside are 45-54-35 North Latitude and 123-56-07 West Longitude.

(a) Within 90 days of the effective date of this Order, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the construction permit of Ken's Corporation for Station KULU(FM), Seaside, Oregon, IS MODIFIED to specify operation on Channel 272A in lieu of Channel 255A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KULU(FM)'s construction permit, BPH-930902MF, except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with construction permit BPH-930902MF, except for the channel as specified above and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

8. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this Report and Order by Certified Mail, Return Receipt Requested, to the permittee, as follows: Ken's Corporation, P.O. Box 1161, Seaside, OR 97138.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

10. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau